

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

VALLEY MINING, LLC, a Minnesota
Limited Liability Company,

Civil No. 06-3667 (JRT/FLN)

Plaintiff,

v.

UNITED STATES OF AMERICA,
ARC OF MINNESOTA, Limited
Partnership,
GERALD O. CHRISTENSON, and
ANITA R. CHRISTENSON,

Defendants,

and

ORDER

ARC OF MINNESOTA, Limited
Partnership,

Cross Claimant,

v.

UNITED STATES OF AMERICA,

Cross Defendant.

John L. Neveaux, Jr., **NEVEAUX & ASSOCIATES**, 1421 East Wayzata
Boulevard, Suite 210, Wayzata, MN 55391, for plaintiff.

Mary E. Bielefeld, **UNITED STATES DEPARTMENT OF JUSTICE,
TAX DIVISION**, CTS, Central Region, P.O. Box 7238, Ben Franklin
Station, Washington D.C. 20044, for United States of America.

Bruce N. Crawford, **HUFFMAN USEM SABOE CRAWFORD &
GREENBERG**, 5101 Olson Memorial Highway, Suite 1000, Minneapolis,
MN 55422; Thomas E. Brever, **FOSTER & BREVER, PLLC**, 2855
Anthony Lane South, Suite 200, St. Anthony, MN 55418, for ARC of
Minnesota.

Gerald O. Christenson and Anita R. Christenson, 25896 County Road 1 East, Wendell, MN 56590, defendants *pro se*.

This case is before the Court on objections to an Order and Report and Recommendation filed by United States Magistrate Judge Franklin L. Noel on February 13, 2008. Objections have been filed by defendants Gerald O. Christenson and Anita R. Christenson and by defendant United States of America. For the reasons set forth below, the Court overrules those objections and affirms and adopts the Order and Report and Recommendation of the Magistrate Judge.

BACKGROUND

Plaintiff Valley Mining, LLC (“Valley Mining”) filed this interpleader action against defendants United States of America (“United States”), ARC of Minnesota (“ARC”), Gerald O. Christenson and Anita R. Christenson, after receiving a notice of levy from the Internal Revenue Service (“IRS”). The IRS sought funds being paid monthly to defendant ARC of Minnesota, which the IRS believes is the alter ego of defendants Gerald O. Christenson and Anita R. Christenson. The United States filed an answer claiming an interest in the funds, the Christensons both filed answers seeking discharge from the case, and ARC filed a cross-claim against the United States challenging the levy. The funds at issue are currently being deposited into a registry of the Court in accordance with a stipulation of the parties.

Defendants ARC, Gerald O. Christenson, and Anita R. Christenson have repeatedly failed to provide satisfactory responses to the discovery requests of defendant

United States, despite three separate orders by the Magistrate Judge ordering their cooperation. On October 25, 2007, the United States moved for the Court to sanction defendants ARC and the Christensons by granting default judgment. The Magistrate Judge granted the motion in part and denied it in part. As to defendant ARC, the Magistrate Judge denied the motion to the extent that it sought default judgment. However, the Magistrate Judge ordered defendant ARC to pay defendant United States' attorney's fees and costs expended in bringing the motion, ordered it to complete any outstanding discovery "including depositions," and indicated that it would consider granting default judgment if defendant ARC again failed to comply with discovery. As to defendants Gerald O. Christenson and Anita R. Christenson, the Magistrate Judge recommended that this Court enter default judgment against both defendants. The objections of both the United States and the Christensons followed.

ANALYSIS

I. OBJECTION OF DEFENDANTS GERALD AND ANITA CHRISTENSON

Defendants Gerald O. Christenson and Anita R. Christenson object to the Magistrate Judge's recommendation that this Court enter default judgment. The Court reviews this recommendation *de novo*. See 28 U.S.C. § 636(b)(1)(C); D. Minn. LR 72.2(b). Where a party fails to obey a discovery order, Rule 37 of the Federal Rules of Civil Procedure permits the Court to issue sanctions against the party, including a judgment by default. Fed. R. Civ. P. 37(b)(2)(A)(vi). Default judgment is appropriate "where the party against whom the judgment is sought has engaged in willful violations

of court rules, contumacious conduct, or intentional delays.” *Forsythe v. Hales*, 255 F.3d 487, 490 (8th Cir. 2001).

Here, the Magistrate Judge recommended default judgment against the Christensons after noting that they had failed to comply with three prior orders directing them to cooperate with discovery. The only comment the Christensons offer in objection is that they served “Silent Judicial Notice” upon both this Court and the Magistrate Judge in 2007. The Christensons provide no explanation of the significance of this “notice,” nor of how it excuses their repeated failures to comply with discovery. In light of those failures, this Court agrees that the sanction of default judgment is appropriate. Accordingly, the Magistrate Judge’s recommendation that default judgment be entered against defendants Gerald O. Christenson and Anita R. Christenson is adopted.

II. OBJECTION OF DEFENDANT UNITED STATES

United States seeks clarification of the discovery requirements the Magistrate Judge imposed on defendant ARC. Specifically, the United States seeks assurance that defendants Gerald O. Christenson and Anita R. Christenson will still be required to comply with outstanding document and deposition requests, despite the entry of default judgment against them individually. The United States notes that this evidence will be critical in assessing whether defendant ARC is indeed an alter ego of the Christensons.

The Court finds that the relief sought by the United States is already required in the Order and Report and Recommendation of the Magistrate Judge. In discussing defendant ARC, the Magistrate Judge ordered the completion of “[o]utstanding

discovery, including depositions.” (Order and Report and Recommendation dated February 13, 2008, at 2.) The Court finds no indication that this requirement excluded any discovery requests relevant to the case against defendant ARC merely because those requests were served on the Christensons. Such a limitation would have been particularly unusual in light of the contention that defendant ARC is the Christensons’ alter ego, and also would have been inconsistent with the Magistrate Judge’s specific reference to depositions. Accordingly, the Court finds that the Order and Report and Recommendation requires the Christensons to respond to any outstanding discovery requests, and that any modification of that Order and Report and Recommendation would be unnecessary.

The United States also suggests that this Court add two findings to the Report and Recommendation, concluding that defendant ARC was created for the purpose of concealing the Christensons’ assets and that ARC is the Christensons’ alter ego. However, adding these findings would essentially amount to granting default judgment against defendant ARC, a result the Magistrate Judge deemed premature. The Court agrees with the Magistrate Judge that it is appropriate to first give defendant ARC a final opportunity to comply with discovery. Accordingly, this Court overrules the United States’ objection, and affirms the Magistrate Judge’s order requiring completion of all outstanding discovery.

ORDER

Based on the foregoing, the submissions of the parties, and all of the files, records, and proceedings herein, the Court **OVERRULES** defendants Gerald O. Christenson and Anita R. Christenson's objection [Docket No. 101] and defendant United States of America's objection [Docket No. 104] and **AFFIRMS and ADOPTS** the Order and Report and Recommendation of the Magistrate Judge [Docket No. 100].

Accordingly, **IT IS HEREBY ORDERED** that:

1. Defendant United States of America's Motion for Sanctions Against ARC of Minnesota and defendants Christensons [Docket No. 58] is **GRANTED in part** and **DENIED in part** as set forth by the Magistrate Judge.

2. The Clerk of Court is **DIRECTED** to enter default judgment against Gerald and Anita Christenson.

DATED: May 23, 2008
at Minneapolis, Minnesota.

s/ John R. Tunheim
JOHN R. TUNHEIM
United States District Judge